



THE GIDEON REPORT

September 2003

THE PROMISE OF GIDEON



Forty years ago, Justice Black wrote the opinion in *Gideon v. Wainwright* establishing that the Sixth Amendment's guarantee of counsel is a fundamental constitutional right, essential to a fair trial and requiring the appointment of counsel for indigent defendants in both state and federal court. It was heralded

as a watershed event. No longer would the justice one received be dependent on the amount of money in his or her pocket.

Unfortunately, in most states the promise of *Gideon* was greater than the delivery. Currently less than half the states operate indigent defense systems at the state level. Counties throughout the country are respondents in lawsuits questioning the quality of court appointed counsel. Lawyers who are neither trained nor qualified to represent defendants are regularly assigned to serious felony and murder cases. Effective representation for the indigent criminally accused is still not a reality in much of the country.

The cost of inadequate representation is great. For a country that has "Equal Justice Under Law" engraved on its Supreme Court building, failing to provide capable counsel to the poor undermines the foundation of our democracy. The continuing coverage of those released from death row after being found innocent highlights the human impact of questionable representation. As of this writing, over 100 people have been exonerated after having been previously sentenced to death. A number even more chilling when we realize these are the most scrutinized of all cases. Colorado has thankfully done better than most. In 1970, a statewide system

to represent indigent citizens accused of crimes, was established. For over 30 years, the Office of the Colorado State Public Defender has maintained a proud tradition of providing quality representation.

The state funded program is a model being followed throughout the country and abroad. In the last few years representatives from New Zealand, Canada and Russia have been directed to Colorado as they research ways to create or improve their systems for providing criminal defense representation.

This system of indigent defense representation has created a culture in Colorado where the rights of the criminally accused are zealously protected. The lawyers, investigators and support staff of the Colorado State Public Defender demonstrate each day that the promise of *Gideon* can be realized. It not only ensures that those facing criminal prosecution are given the best defense regardless of

their ability to pay, but it also assures every citizen that the rights of the individual will not be unjustly compromised. These values are secured by a state organization providing legal representation in a fiscally responsible manner.

Establishing a successful model is one challenge; maintaining it is another. The country's recent economic difficulties have placed

tremendous pressure on those providing indigent defense services. Cases handled by the Office of the Colorado State Public Defender have increased 18.5% over the last two years without a corresponding increase in funding. In fact, this past year, the Colorado State Public Defender was required to cut \$1.1 million out of its already lean budget to help alleviate the state's budget crisis. Individual attorney caseloads are often too high and maintaining the highest standards is increasingly difficult. As these facts demonstrate, no state is immune from the risk of failing to meet its responsibility to provide effective counsel to those in need.

"It makes no difference how old I am or what color I am or what church I belong too if any. The question is I did not get a fair trial. The question is very simple. I requested the court to appoint me attorney and the court refused."

**Clarence Earl Gideon:
Portion of hand written petition to
Supreme Court, 1962**

Staying on the right side of this fiscal tightrope has never been more important. The science of DNA has now clearly established the cost of a compromised criminal justice system. Untested identification procedures and false confessions, no longer considered an anomaly, undermine the public's confidence in law enforcement. But these concerns can be minimized by a strong system of indigent defense. The release of the wrongfully incarcerated highlights many of the vulnerabilities of our criminal justice system. Adequate funding for indigent defense is the best protection against greater failures. Although the attack of September 11, 2001, highlighted the need to be more vigilant against those who would do us harm, making sure that such vigilance does not compromise the values we cherish is best accomplished through effective defender services.

The anniversary of *Gideon v. Wainwright* is an appropriate time to measure how we have done as a country and as a state in providing "fair trials before impartial tribunals in which every defendant stands equal before the law." Colorado can be proud of its accomplishments but must ensure its continuing success. The lawyers, investigators and support staff of the Colorado Public Defender System and those who have learned their craft as members of such a system work tirelessly to fulfill their mission. All of Colorado can be proud to be citizens of a state continually pursuing Gideon's promise of justice for all.



(Original Public Defender Logo, Drawn by Michael J. Bell, 1969, Inmate Cañon City Correctional Facility.)

THE HISTORY OF THE OFFICE OF THE COLORADO STATE PUBLIC DEFENDER

In 1963, the United States Supreme Court issued its opinion in *Gideon v. Wainwright*, 372 U.S. 335 (1963), ensuring that the indigent accused were entitled to representation of counsel in criminal cases. During that same year, the Colorado General Assembly passed the Colorado Public Defender Act in response to the Supreme Court's decision in *Gideon*. Four county public defender offices were established under the Act. These first offices were located in Denver, Brighton, Pueblo and Durango.

In 1970, the State Legislature passed the Administrative Re-Organization Act. The State began to oversee the court system and assumed responsibility for the appointment and funding of counsel for indigent defendants. The Office of the State Public Defender was created and became an independent agency of the State of Colorado.

Today, the Office of the Colorado Public Defender is comprised of 21 regional trial offices, one appellate division and a central administrative office. The Office handles over 70,000 criminal cases a year with a staff comprised of 235 attorneys and a support staff of 120. David S. Kaplan was appointed to become the State's 5th Public Defender effective January 1, 2000, and continues in that position today.

Public Defenders do battle every day. It takes someone who is passionate about making sure justice is provided to the least fortunate. It takes a sharp mind and an intellectual curiosity to search out the law and present a persuasive position. It takes a compassionate heart to gain the trust of a client and share in their most difficult times.

David S. Kaplan
Colorado State Public Defender

FUNDING THE CONSTITUTIONAL RIGHT TO COUNSEL

It is the responsibility of the Office of the Colorado State Public Defender to provide effective criminal defense representation to indigent persons charged with committing crimes in the state, except in those cases where there is a conflict of interest. The right to counsel is established and guaranteed by both the *United States* and *Colorado Constitutions*.

In carrying out its mandate, the Office of the Colorado State Public Defender is recognized both nationally and internationally for providing the indigent accused with quality legal representation in an effective and efficient manner. In 1998, The Economist magazine applauded the Colorado system as one of only two public defense systems in the United States whose structure provided zealous client advocacy in a cost-effective manner.

While the Office's primary function of providing criminal defense representation remains static, the criminal justice environment in which the Office operates is constantly changing. The Office's overall caseload continues to grow at a rate exceeding population growth in the State of Colorado, and the nature of cases is becoming more complex. In FY 2002 the Public Defender was appointed to handle over 70,000 cases and caseloads have increased by 5.0% compared to only a 1.8% increase in population.

Recent changes in Colorado criminal laws have had a significant impact on the complexity of criminal cases. Changes to the sentencing scheme include: mandatory life sentences without the possibility of parole for first-degree murder convictions; life-time probation and indeterminate sentencing for sex offenders often resulting in sentences to prison for the rest of one's life; aggravated sentencing provisions that apply to a broad category of crimes exposing these offenders to very lengthy prison sentences; and mandatory parole and new post-parole supervision requirements that can result in a sentence longer than that originally imposed. This increased complexity of criminal cases has a direct impact on the difficulty and manageability of the caseloads handled by the Public Defender system.

There has also been a trend towards charging juveniles as adults. The prosecutor's offices have broad discretion in deciding whether to try juveniles in juvenile or adult court. The age for direct filing was lowered from 16 to 14 and, in some cases, 12 years of age. The types of cases where direct filing is an option for the prosecutors has been greatly expanded to include any felony crime of violence or any felony involving the use or threatened use of a deadly weapon. The increased discretion afforded prosecutors with regard to direct filing has contributed to the increase in felony caseloads handled by the Public Defender system.

The less forgiving trend seen in the adult criminal justice system is now flowing into the juvenile system. Even when juveniles are prosecuted under the juvenile code, they face harsh consequences when adjudicated delinquents such as lengthy incarcerations and placements out of their home. A juvenile record is not necessarily expunged when the juvenile becomes an adult. The right to a jury trial has been eliminated for lower level felonies committed by juveniles. Prior juvenile convictions may now be used to aggravate sentences for subsequent crimes committed as an adult. Juvenile sex offenders must register as sex offenders well into their adult years.

All these changes, adult and juvenile, impose a higher level of punishment and create serious potential implications for the future if an offender is ever charged with a subsequent crime. Because of these harsh consequences, those who are accused are less likely to enter pleas of guilty to charges and are more frequently and vigorously contesting their criminal charges.

The changing environment in criminal defense presents a formidable challenge to the Office of the Colorado State Public Defender. The Office has adapted to these changes by focusing on new technology, staff development and training. The Office's efforts in utilizing available resources and technologies has resulted in better efficiency in handling both the increasing size and the increasing complexity of the caseloads. By taking advantage of these opportunities, we continue meeting our constitutional, statutory and ethical

obligations to provide quality representation to the indigent, maintain the critical attorney-client relationship and continue our commitment to providing excellent service to the poor.

Our budgetary objectives include:

- ◆ Provide effective legal representation in more than 70,000 cases per year
- ◆ Ensure compliance with applicable constitutional and statutory requirements and standards
- ◆ Streamline administrative and other routine processes to avoid duplication of resources in regional trial offices
- ◆ Continue to provide a high level of training to ensure that clients receive effective legal representation and that Public Defender attorneys are aware of on-going developments in the law
- ◆ Maintain a competitive work environment to attract and retain qualified staff
- ◆ Better utilize existing resources and new technologies to more efficiently handle increasing caseloads and increasingly complex cases
- ◆ Continually evaluate and evolve key functions to ensure the Public Defender system adapts to the changing legal environment.

TRAINING TO MEET THE CHALLENGE

Members of the Office of the Colorado State Public Defender strive to zealously represent each and every one of their clients who are accused of committing crimes. The Office recognizes the need, and emphasizes the importance, of providing on-going, quality training programs to its employees to equip them with the advocacy skills they need to zealously represent their clients.

The Office has instituted a comprehensive program that offers all employees extensive in-house training opportunities in a variety of settings. Each training session is designed to maximize existing resources while minimizing the cost customarily associated with producing high-quality training seminars. Experienced attorneys and staff from within the Public Defender's Office volunteer their time to train colleagues in the areas of their expertise.



The Office's efforts have yielded a remarkable, cost effective program that has produced a highly talented staff that, in turn, ensures the best possible representation for all clients, at all stages of their legal proceedings. Because of these efforts, The Office of the Colorado State Public Defender is recognized nationally as a leader in providing training to those who represent the criminally accused.

Initial Attorney Training

When a new attorney begins their practice at this Office, they are paired with an experienced Public Defender from the same regional office. The supervising attorney mentors the new attorney and regularly provides individualized one-on-one training to the new attorney. Regional offices also offer “in-house” training sessions that cover specific topics unique to the jurisdiction covered by the office. Additionally, the State Office provides monthly training sessions that include topics such as: opening/closing argument, cross/direct examination, *voir dire*, impeachment, discovery and prosecutorial misconduct. These sessions are mandatory for new attorneys and are repeated in different regions throughout the State of Colorado. Experienced attorneys from within the Colorado Public Defender system, as well as lawyers in private practice, volunteer their time to teach these sessions.



Bootcamp

Every attorney who is hired by the Colorado Public Defender system is required to participate in a one-week intensive trial training program, affectionately called “Bootcamp”. “Bootcamp” sessions are typically comprised of six attorneys who have been practicing in the Public Defender system for approximately one year. Bootcampers, using a prepared problem, are required to prepare and conduct a mock felony trial from start to finish. During the week, the lawyers are required to argue motions, select a jury, cross-examine witnesses and give persuasive opening and closing statements.

Participants are taught and critiqued by the most experienced attorneys within the system. This innovative program has proven very successful in preparing our attorneys to provide high quality representation for the indigent accused in Colorado. A wonderful side benefit for the attorneys is that this unique training fosters a lasting camaraderie between the attorneys who attend “Bootcamp” together and many career-long friendships are formed.

Advanced Attorney Training

New developments in Colorado criminal law and in forensics can significantly impact the complexity of criminal cases that are handled by Colorado lawyers. In order to provide effective assistance of counsel as required by the *Federal* and the *Colorado Constitutions*, Public Defenders must be familiar with these changes as they occur and must be aware of the various constitutional issues that surround the application of these new developments in Colorado criminal law. To ensure that Public Defenders are prepared to meet the challenges presented by these new developments in criminal law, the Office periodically designs training seminars to address the needs of its more experienced attorneys and to provide a more advanced level of training. These sessions cover a wide range of topics and offer an opportunity for attorneys to brainstorm defense approaches to the new developments in criminal law with colleagues who may have already wrestled with these more challenging issues. The lawyers have been offered advanced training in issues involving a number of topics including mental retardation, insanity and the ever-changing science of DNA.



Annual Training Conference

The Colorado Public Defender system sponsors an annual training conference for its employees. The conference lasts 3-5 days and attorneys are eligible to receive approximately 17 Continuing Legal Education credits. The training conference offers both practical and innovative training opportunities in the form of lectures delivered by some of Colorado's, as well as the nation's, finest practitioners and in the form of interactive workshops. Private criminal defense practitioners can also attend the annual training conference at a competitive price. Additionally, the conference provides learning opportunities for the Public Defender's in-house investigators and secretarial staff. There is no cost to Public Defender employees to attend the conference, however employees are responsible for their lodging.



Outside Training Programs

With the changing complexity of criminal cases, the Office recognizes the importance of continually seeking out new ideas and approaches to defending individuals charged with criminal offenses. In addition to internal training offered by the Office, employees are encouraged to identify and participate in outside training programs that will help employees remain current on the wide range of techniques, practices and technology effecting the criminal defense profession. As part of a "Train the Trainer" philosophy, upon returning from the training program, the employee is asked to conduct a training session for other employees so that the system may benefit from the experience as a whole. When Public Defender employees are asked to lecture at an outside

training program, arrangements are regularly made with the program to provide a scholarship to the Office so that an employee from within the Public Defender system may benefit from the training as well.

Investigator Training

The Colorado Public Defender's investigators are dedicated to perfecting their craft and the art of investigation work. In 1998, investigators within the Office designed and implemented a year-round training program geared specifically for investigators.

This training curriculum closely follows the guiding principles of the Continuing Legal Education program for attorneys, even though Colorado does not require licensing or continuing training for criminal investigators. A total of three credits are awarded to each investigator who attends a full day of training. Pursuant to the Public Defender's Personnel Rules, every investigator must accumulate a total of 45 Continuing Investigation Education credits every three years and is evaluated with regard to his or her compliance with this training requirement.

Pooling from a wide range of knowledge and expertise, this training curriculum includes day long sessions covering topics such as firearms training or ballistics, as well as an intensive fundamentals training course specifically designed to solidify an investigator's knowledge of interviewing, witness location and other criminal investigation requirements. Fellow investigators, attorneys and specialists are invited to participate in these sessions, which are held several times a year at various locations throughout the State of Colorado.

Recently, the Public Defender's investigative staff arranged for Brandon A. Perron, the National Director of the Criminal Defense Investigation Training Council, to lead a training seminar at the Public Defender's Annual Training Conference. One of the Counsel's primary goals is to provide a vehicle for criminal defense investigators to raise the bar on professional competence in the field through its Board Certified Criminal Defense Investigator Program. Many Public Defender investigators took advantage of the opportunity to become certified criminal defense investigators.

Multi-Media Trial Presentation Training

The use of technology to improve courtroom presentations has grown during recent years. To keep up with the increased sophistication of multi-media technology, the Public Defender system has made digital cameras, laptop computers, scanners, proximas and various software products available to all of the regional offices. The Office emphasizes the importance of utilizing these new techniques of persuasion in appropriate cases to help provide effective criminal advocacy for the clients we represent.



Thanks to three investigators in our Colorado Springs regional trial office, Paul Brown, John Gonglach and Greg Larsen, a one-day, hands-on training program in multi-media assisted trial work was developed in mid-2003 and will be presented to each of the regional offices over the next year. This training is primarily geared towards investigators to help them learn how to make use of these resources. The training will ensure that each investigator has a working knowledge of Power Point and Iview as well as the ability to operate the various equipment needed to display multi-media driven demonstrative evidence in a courtroom setting.

Secretarial Training

The administrative staff at the Office of the Colorado Public Defender is often the first contact point that a client has with the office. Staff is responsible for addressing a wide range of questions that a client has, from the emotional

aspect of being charged with a crime, to general questions regarding the criminal process. Additionally, the administrative staff is responsible for helping potential clients complete an application for court-appointed counsel and assisting them in understanding the eligibility process. The staff is charged with a wide variety of duties on a daily basis, necessary to keep each office running smoothly. Their role is undeniably important to the operation of the Public Defender system.

In 1998, members of the Public Defender's administrative staff began to collectively identify topics they wanted to learn more about in an effort to achieve greater efficiency in performing their job. This combined effort has evolved into a notable training program, largely through the enthusiasm and enduring commitment shown by the administrative staff statewide.



A committee of volunteer staff works with the system's Training Coordinator to design four regular training seminars held throughout the year. The committee seeks suggestions from staff members around the State and uses this information to develop a training curriculum. The varying program focus provides an opportunity for staff members to develop practical skills and expertise in various subjects that can be used in their jobs each day. It also provides a forum for communication amongst the Public Defender's regional offices to discuss procedures in their respective jurisdictions. Each area covered during these workshops continues to improve the level of understanding, care and representation of indigents in Colorado.

Management Conference

The Office of the Colorado State Public Defender is an integrated agency servicing the entire state of Colorado through twenty-two separate regional offices. Administrative decisions that affect the whole system are made by the State Office located in Denver. Obviously there are obstacles to running a statewide agency from a central, and relatively small, administrative office, most notable making sure that all State Office instituted policies and procedures are distributed and explained to all the different regional offices so consistency in representation is maintained. Therefore, every spring, the Public Defenders management staff – the administrative officers, the office heads and the head secretaries - meets for an intensive management conference. Newly instituted policies are discussed, problems are brought to the attention of the State Office, future goals are set, ethical concerns are brainstormed and new developments in employment law are presented.

Although recent budget constraints have resulted in an abandonment of the traditional joint conference with office heads and head secretaries, the abbreviated, separate conferences still cover all necessary material and information to ensure the effective delivery of indigent defense services to all of Colorado.



GIVING BACK TO OUR COMMUNITIES

Ride the Rockies Tour

Cynthia Mares, an attorney in the Denver regional trial office, along with two other members of the Hispanic Bar Association, served as team leaders and recruited 9 inner city middle school and high school students to participate in the Ride the Rockies Bicycle Tour. This week-long tour covers 454 miles through the scenic Rocky Mountains in Colorado. The goal of this particular program was to teach young men and women that if they set a goal for themselves, no matter what it is, they can achieve that goal with the appropriate training and discipline. The team leaders were responsible for securing donations to cover room and board as well as all of the appropriate riding gear for every kind of weather, including the road bikes for the young riders. Once the young riders completed the ride, they were allowed to keep all the equipment, including the road bikes.



Fort Logan Mental Health Center

Each year, the Denver regional Office of the Colorado Public Defender organizes an indoor golf tournament fund-raiser to benefit children at the Fort Logan Mental Health Center. Funds raised at this annual event, spearheaded by deputy state public defender Lurix “Skeet” Johnson, are used to purchase toys for Fort Logan’s children during the Holiday season.

Habitat for Humanity

Approximately 10 employees in the Public Defender's Golden regional trial office donated their time landscaping 4 houses in Adams County for Habitat for Humanity. The families who would move into these homes the following week were first-time homeowners.



Community Educational Outreach

Liz Hunt-White, an attorney in the Public Defender's Appellate Division, and Marshal Seufert, an attorney in the Denver regional Public Defender's Office, co-founded a non-profit organization called Community Educational Outreach that provides educational opportunities to individuals who are incarcerated in the Denver metropolitan area.

Project Angel Tree

Stephanie Stout, a deputy state public defender in the Greeley regional trial office, recently organized an office Christmas charity project to help underprivileged children. The office was able to sponsor 8 children through Project Angel Tree, which is an organization that provides services and Christmas gifts to children of prison inmates. All of the children who are eligible to benefit from this program are screened for need. The Project then ensures that each child who qualifies receives at least one clothing outfit and one toy. The office donated \$275 to this worthy cause.

Colorado Combined Campaign

The Colorado Public Defender system participates in the Colorado Combined Campaign each year to raise money for non-profit organizations in Colorado. Employees earmark their voluntary donations to benefit specific organizations that participate in the Combined Campaign program. Over the past three years, the system has donated more than \$47,000 to organizations who help those in need in the State of Colorado.

Colorado Bar Association



In July 2003, Ray Torrez, a deputy state public defender in the La Junta Regional trial office, became a Vice President for the Colorado Bar Association's 4th district, which covers southern Colorado.

Mr. Torrez serves on the executive council for the Colorado Bar Association, which is the principal policy-making entity of the Association.

Colorado Criminal Defense Bar Association



In June 2003, Carrie Thompson, a division lead in the Denver Regional trial office, became President of the Colorado Criminal Defense Bar Association. The CCDB is a committee-based organization that is committed to providing training and support to the criminal defense community throughout the State of Colorado. The CCDB is

comprised of many committees that address the different facets of criminal defense work. The CCDB also works with the state legislature to give input on changes to the criminal statutes in Colorado. Ms. Thompson oversees the board of directors for the CCDB.

CONNECTING THE SYSTEM THROUGH INNOVATIVE TECHNOLOGY

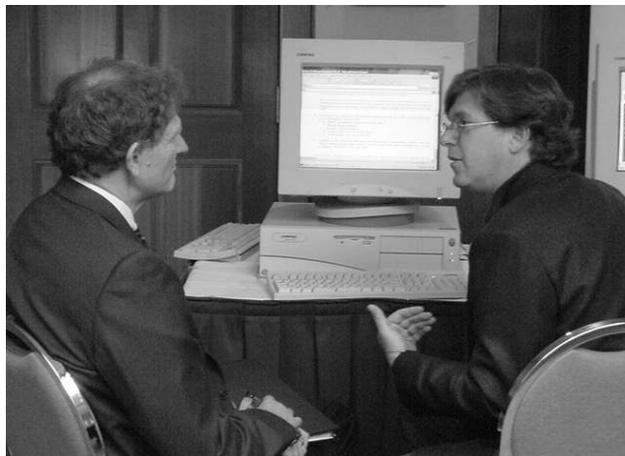
In 2000, the State Office formed a committee to develop, design and implement a statewide “bulletin board” for Public Defender employees that would provide a centralized forum to share information among all the offices. The idea was to utilize computer technology to develop banks of practical information that would enable employees to do their jobs more efficiently and avoid “re-inventing the wheel”. The culmination of this effort was the introduction of a state-of-the-art intranet in the fall of 2000, known as the Defender Net (DNET).

The first phase of DNET allowed each regional office shared access to a centralized Appellate Brief Bank, Death Penalty Motions Bank, Trial Motions Bank, Expert Witness Transcript Bank and an index of research materials housed in the State Office. Since that time, however, DNET has evolved into much more. It is now an efficient resource for Public Defender employees to access unique motions and briefs prepared by other dedicated attorneys within the system. In addition, the Research Materials Bank has been expanded to feature a topical index of relevant books, videotapes and other media that each regional office has compiled over the years while defending cases. These documents are available for any Public Defender employee to borrow.

During phase two of the DNET project, the administrative processes vital to maintaining consistency throughout the Public Defender system were brought on-line and a virtual Administrative Notebook was created. The Notebook contains the System’s Secretarial Guide, which houses all State Office directives with regard to purchasing, travel reimbursement, death penalty case administration, as well as all other office policies. In addition to housing the Secretarial Guide, the Notebook also includes information that can be utilized by attorneys as well. For example, the Administrative Notebook contains information regarding statewide client treatment programs, lists of Spanish speakers from around the system, as well as application forms in both English and Spanish. Additional topics added

during phase two included on-line access to all office forms, a sophisticated subpoena system, as well as a directory of the employees in each regional office, including their e-mail addresses and telephone extensions. Training manuals were also brought on-line for county court attorneys, juvenile attorneys, appellate attorneys, investigators and secretaries.

To kick off phase three of the DNET project, the System’s secretarial staff designed a searchable database that lists the addresses and phone numbers of all government services statewide, known as the Government Services Directory. Additionally, phase three of the DNET project is scheduled to include a more detailed catalog of alternative sentencing and treatment programs available to clients in each county throughout the State of Colorado, a Legislative History Bank that examines the legislative intent of various criminal statutes enacted over the years, as well as an extensive expansion of the Trial Motions Bank.



(Photo of David Kaplan, Colorado State Public Defender, with Colorado Supreme Court Justice Michael Bender)

The DNET concept is a tribute to the innovation and vision of all System employees. The computer application utilizes Zope shareware technology that is available through the Internet without cost to the State of Colorado. During these tough economic times, when the Public Defender system is working hard to maximize existing resources and minimize costs at all levels, the DNET shines as a hallmark of these efforts.

VICTORIES FOR COLORADO CITIZENS

Forty years ago, in *Gideon v. Wainwright*, the United States Supreme Court ruled that the right of an indigent defendant to the assistance of counsel was a fundamental constitutional right necessary to a fair trial in criminal cases. The Court stated that “reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth.”

Although the right to counsel would seem well established by now, forty years later, situations still arise that require the courts and attorneys for defendants to exercise vigilance in enforcing the right to counsel for Colorado citizens. A recent example is the case of *People v. Dale Campbell* litigated by the Appellate Division of the Colorado State Public Defenders.

Mr. Campbell and his attorney had a conflict of interest, and the attorney asked to withdraw from the case. The trial court initially refused to let the attorney withdraw but ultimately told Mr. Campbell that he had to choose between going to trial with his current attorney or proceeding without an attorney. Mr. Campbell protested that he did not want to do either, but wanted another attorney to represent him. The trial court then forced Mr. Campbell to proceed to trial and represent himself, with the current attorney acting as advisory counsel. Mr. Campbell was convicted at trial.

On appeal, the Office of the State Public Defender argued that this sequence of events violated Mr. Campbell’s right to counsel. The Court of Appeals agreed, finding that Mr. Campbell had not waived his right to counsel and that he should not have been forced to choose between proceeding to trial as his

own attorney or proceeding with an attorney who had a conflict of interest. The case was reversed for a new trial.

Another fundamental constitutional right that has garnered a great deal of recent attention and litigation is the right to a jury trial. A growing trend among the state and the federal governments was to pass statutes that allowed increased sentences based on findings made solely by a judge. In *Apprendi v. New Jersey*, the United States Supreme Court held that any fact, other than a prior conviction, that is used to increase punishment could not be determined only by the judge, but must be submitted to a jury and proven beyond a reasonable doubt. In a logical extension of this ruling, the United States Supreme Court, in *Ring v. Arizona*, applied the *Apprendi* reasoning to death penalty cases and held that any fact necessary to make a defendant eligible for the death penalty must be established beyond a reasonable doubt by a jury.

This case had a major impact in Colorado because in 1995 the legislature had changed the state’s death penalty statute to remove the sentencing decision from the hands of the jury and place it with a panel consisting of three judges. After *Ring* was decided, the Office of the State Public Defender argued, in *Woldt v. People*, that *Ring* and *Apprendi* made Colorado’s three judge death penalty scheme unconstitutional because the judges, not a jury, made the factual determinations necessary to impose a death sentence. The Colorado Supreme Court agreed and held that the factual findings that must be made before a sentence of death can be imposed must be subjected to the scrutiny of a jury of the defendant’s peers, rather than decided by judges.

As the foregoing cases demonstrate, even well established fundamental constitutional rights still need protection to ensure that the citizens of Colorado receive the basic components necessary to ensure fair trial and just results. The Office of the State Public Defenders remains vigilant and continues its mandate of protecting the rights of the people of Colorado.

HELPING CLIENTS TO HELP THEMSELVES THROUGH TRANSITIONAL AND RESTORATIVE SERVICES

Family dysfunction and chaos fill the lives of many of those who come into contact with the criminal justice system. Although there are many factors affecting the crime rate, studies show that an unstable home environment is a key contributing factor. During these times of fiscal and economic challenges for the State of Colorado, creating a comprehensive offender intervention program is now reaching a critical stage.

Public Defenders care deeply about the people whose lives hinge upon our representation and, due to the attorney-client relationship, are often in a unique position to learn the intimate details of a client's life issues and special needs. However, the enabling statute, CRS §21-1-101, et. seq., for the Office of the Colorado State Public Defender makes clear that the primary purpose of this agency is to provide representation to qualified clients who are charged with criminal offences. We are neither authorized nor budgeted to provide assistance to clients in such areas as housing, employment or family counseling.

Recognizing these statutory limitations and also recognizing that addressing the special needs of a client can often divert the individual from future involvement in the criminal justice system, this Office has sought partnerships with community and criminal justice coalitions that do address these issues. Specifically, the Office explored the possibility of obtaining grants to fund positions and offer services that were deemed vital to a comprehensive offender intervention program, but were not part of the state funded services provided by the Public Defenders. These services are aimed at providing a less expensive alternative to incarceration.

Utilizing federal funding opportunities, the Office has been able to establish innovative programs that address the unique issues facing our client base while improving the criminal justice system as a whole. The grants have allowed this Office to hire part-time interns and offer services not heretofore available to our clients, all without using funds from the Public Defender budget.

The projects that have been successfully implemented to date include:

The Denver Drug Court Deferred Judgment Project

In December of 1999, the Public Defender's Office applied for its first federal grant from the Edward Byrne Memorial State and Local Law Enforcement Assistance Program. The Office was awarded \$60,968 over a 2-year period for its Denver Drug Court Division. This federal grant allowed the Office to fund an innovative program designed to initiate contact with clients in the Denver County Jail who had been arrested because they failed to comply with the conditions of their Drug Court sentence.

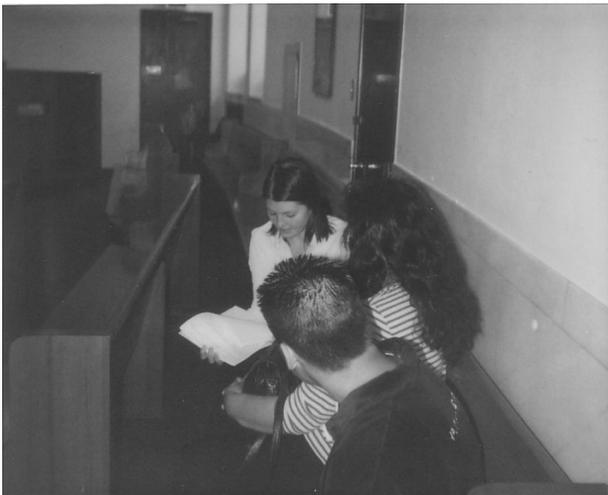


The majority of these clients had been arrested because they violated a technical condition of their sentence such as missing appointments with a probation officer or treatment provider, relapsing, failing to maintain acceptable housing arrangements or failing to maintain a job. Prior to his or her court appearance, intern caseworkers, who were funded through the grant, met with each client to determine the reason the client was unable to comply with probation. In appropriate cases, the interns would obtain written verification of the extenuating circumstances that played a part in the client's non-compliance and investigate whether a client was eligible to participate in community programs that could help address the root causes for the non-compliance – all in an effort to keep the non-violent drug offender out of prison.

Prior to this program, the court was frequently left to determine sanctions and decide whether to revoke a defendant's sentence without understanding the root cause for a client's non-compliance. This funding provided the resources that allowed the Office to complete a missing link and provide assistance to the Court in determining whether the defendant should return to treatment or be incarcerated further. In many cases, the project helped to facilitate the reintegration of clients back into their treatment regimen rather than suffer a revocation of sentence that would have resulted in greater expense to the State of Colorado.

The Denver Juvenile Court Access to Counsel Project

The Division of Criminal Justice's Office of Juvenile Justice and Delinquency Prevention awarded the Public Defender's Office \$127,022 over a 3-year period of time beginning in September of 2001 to fund a program designed to provide juveniles in Denver Juvenile Court with access to counsel at all stages of a juvenile's criminal proceedings. Prior to the funding provided by this grant, no agency had the resources available to provide early access to counsel. First court appearances were often chaotic and stressful events for both the juvenile and his/her parents.



Now, under the grant, project caseworkers meet with juveniles who are in a detention facility prior to their first court hearing (detention hearing) and fully explain their basic legal rights to them, including what to expect at the detention hearing. During the

hearing, information gathered by caseworkers is presented to assist the Court in determining the best possible placement for the juvenile. Additionally, the project actively seeks involvement from family members or other relevant support people, including teachers, counselors, ministers and social workers.

Caseworkers also meet with the juveniles' parents in the courtroom before each case is called to explain the legal process and to substantiate the information presented to the Court by Correctional Connections, the agency that provides the Court with pre-trial release assessments for juveniles in Denver. Meeting with a parent at this point in time, after the child had been in detention for 48 hours and a "cooling off" period has passed, often results in the parents' willingness to take the child back into the home even though the parents may have initially told Correctional Connections that they were unwilling to take the child back. The information gathered by the project staff is utilized by the Court to determine whether the child should remain in detention or could be granted pre-trial release as long as the child is able to comply with various conditions of release.

The El Paso County Minority Family Advocate Program

In 2002, the Juvenile Justice and Delinquency Prevention branch of the Colorado Division of Criminal Justice awarded the Public Defender's El Paso County regional office \$46,901.00 to fund a Minority Family Advocate program for juveniles. The grant awarded to the Public Defender's Office is part of a larger project that was funded through a Senate Bill 94 organization called Mission Possible. The Public Defenders utilize these advocates to provide support in the representation of children from minority families. The goal of the project is to decrease the number of children who are arrested because they fail to comply with the court's orders.

By design, there are no boundaries to the type of assistance these advocates can provide. Some examples of the type of work the advocates provide include: helping children complete the enrollment process to get back in school or into appropriate treatment; identifying community programs that provide needed services such as housing, food and transportation for minority families; transporting children to and from court appearances or counseling

sessions; assisting families in applying for counsel or diversion; arranging for family mediations in order to help resolve cases where the charges arose from a family conflict; helping children obtain appropriate clothing to wear to court; providing interpretation for children who are not fluent in English during office conferences and telephone calls; arranging for at-risk children to participate in privately funded sports and arts programs; and assisting children in writing letters of apology and setting up pre-adjudication community service.

The Jefferson County Pre-Sentence Alternatives Project

In July 2003, the Public Defender's Office implemented a program in its Golden regional trial office (Jefferson County) that assists adult clients in the Jefferson County Jail who are unable to post bond. This project marks the second Edward Byrne Memorial State and Local Law Enforcement Assistance Program grant that the Colorado Public Defender system has received. The Office was awarded \$63,276 to fund this program over the next year.



The project targets adult clients who are arrested for a non-violent felony offense and have either a history of substance abuse, mental health need, developmental disability and/or a physical disability. These factors have been shown to preclude individuals from meeting the standard conditions associated with the ability to post a traditional bond.

The project funding allows the Public Defender's Office to employ part-time clinical social workers for the first time. The social workers, in addition to one student caseworker who is working towards a master of social work degree, assess in-custody clients within the target population and develop treatment plans in an effort to obtain the client's release on bond. The social workers also work to develop, and put in place, unique treatment plans that may result in a client receiving a sentence to probation rather than prison.

The system-wide benefits of this program include easing the strain on already overburdened court dockets and reducing jail overcrowding. Additionally, this approach provides an opportunity for an individual to resume fulfilling his or her responsibilities with regard to family issues such as maintaining employment to pay for housing, food, child care, etc.

The Northeastern Colorado Minority Over Representation Project

In October 2003, the Public Defender's Office will launch its second project utilizing funding from the Division of Criminal Justice's Office of Juvenile Justice and Delinquency Prevention. The Public Defender's Office in Greeley (Weld, Morgan, Logan, Kit Carson, Phillips, Sedgwick, Washington and Yuma Counties) was awarded \$30,475 to employ a social worker over the next year to conduct needs assessments for children of color who come into contact with the juvenile justice system in the 13th and 19th Judicial Districts of Colorado.

While the rural communities of Colorado currently face many of the same fiscal challenges the rest of the State is coping with, the ability to find appropriate resources is becoming more complex. Innovative ways of accessing services has become more important due to the limited number of service programs available in the vastly rural, northeastern part of the State. Further exacerbating this issue, the number of service programs that are available in Northeastern Colorado is rapidly decreasing as a result of growing economic pressures. For example, the Weld County District Attorney's Office closed its juvenile diversion program mid-2003 and other programs are closing as well, leaving the criminal justice system with fewer sentencing options and less resources to spend addressing the issue.

THE TERRI BRAKE MEMORIAL SCHOLARSHIP FUND

This project will provide resources that allow a social worker to conduct individualized needs assessments with the involvement of the child's family, and will assist in the search for appropriate placements, both pre-adjudication and post-adjudication. The goal is for the social worker to become familiar with various options for placement, and assist Public Defenders in conveying those options to the court.

It is anticipated that this project will not only prove that utilizing resources to conduct thorough needs assessments for minority youth will result in the identification of the underlying causes not only of delinquency and help the court determine appropriate sentences, but will also have the greatest potential of diverting children of color from future involvement with the criminal justice system.



Terri Brake was a unique public defender who excelled at both trial and appellate practice. Her dedication and sacrifice impacted not only the many people who have passed through the Colorado Public Defender system, but also her clients that she so wholeheartedly served. Her concern and empathy for her clients were unsurpassed. Whether winning a life verdict or receiving a death sentence, Terri always spent time with her clients, remembering who was important.

Terri believed that we all share a common humanity with the accused. She believed in compassion not hate. Terri will always be cherished by generations of public defenders and private practitioners. She will not be forgotten, nor will all that she believed in.

For those people who have chosen to follow her lead, the Terri Brake Memorial Scholarship Fund has been established. Two scholarships of \$500 each are awarded annually to lawyers, investigators or paralegals/mitigation specialists who are interested in attending training seminars that assist them in capital litigation. The Scholarship application is available on-line at: www.state.co.us/defenders. Applicants can submit a completed application via e-mail to:

brake.scholarship@state.co.us,

or mail it to:

The Terri Brake Memorial Scholarship Fund
110 Sixteenth Street, Suite 800
Denver, Colorado 80202

**Colorado State Public Defender
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THE GIDEON REPORT



The Gideon Report is a periodic publication of the Colorado Public Defender system outlining accomplishments, criminal defense issues and programs. This initial publication celebrates the landmark decision of *Gideon v. Wainwright* and 33 years of the Colorado Public Defender System.